

### **REMARKS**

This responds to the Office Action dated July 27, 2007.

Claims 26, 28, and 30-33 are amended. Claims 1-5, 9-18 and 22-35 are pending in this application (as indicated in the Office Action, but see below).

#### **Request for Reentry of Claims**

The Office Action Summary indicates that claims 1-5, 9-18 and 22-35 are pending. However, based on the Restriction Requirement of April 9, 2007 and its Response filed on May 9, 2007, Applicant believes claims 1-42 should be pending in the present application, of which claims 6-8, 19-21, and 36-42 are withdrawn from consideration.

The Restriction Requirement of April 9, 2007 identified only species. As stated in the Restriction Requirement, "Upon allowance of a generic claim, applicant will be entitled to consideration of claims to additionally species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141."

Applicant traversed a statement in the Restriction Requirement: "Currently, none generic", which is understood as stating that no claim is generic. The "Response to Arguments" in the Office Action does not address this traversal. Based on the species identified in the Restriction Requirement, Applicant maintains that at least claims 1 and 14 are generic. Therefore, it is believed that Applicant is entitled to consideration of claims 6-8, 19-21, and 36-42 upon allowance of claims 1 and 14.

In light of what is believed to be allowable as discussed below, Applicant respectfully requests reentry and consideration of claims 6-8, 19-21, and 36-42 in this application.

#### **Drawing Objections**

Replacement formal drawings of FIGS. 1 through 10 are submitted herewith.

#### **Claim Objections**

Claim 28 and 30 have been amended. Applicant believes that the issues raised in the objections have been addressed.

§103 Rejection of the Claims Using Nemirovski and Anderson

Claims 1-5 and 9-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nemirovski (US 6,671,379, herein “Nemirovski”) in view of Anderson (US 5,721,783, herein “Anderson”).

*Claim 1*

Applicant respectfully traverses the rejection and submits that the office action does not set forth a proper *prima facie* case of obviousness because the cited portions of Nemirovski and Anderson, individually or in combination, do not provide the claimed subject matter. For example, Applicant is unable to find in the cited portions of Nemirovski and Anderson, among other things, a wireless transmitter to transmit a first wireless signal representing an occluded sound, and an earmold housing the wireless transmitter, as recited in claim 1.

The Office Action (paragraph 6) reads Nemirovski’s communication device 14 to be the wireless transmitter recited in claim 1 and states that “Anderson teaches an earmold housing ... the wireless transmitter”. Nemirovski relates to a communication system 10 including an earset 18, and communication device 14 is external to earset 18 (FIGS. 1 and 3; column 4, lines 27-42). Nemirovski states, in column 4, lines 17-24:

In the illustrated embodiment, the communication device 14 and the remote telephone 16 are wireless telephones, such as cellular telephones. However, one skilled in the art will appreciate that the communication device 14 and/or the remote telephone 16 can be other types of devices, including hardwired (land line) telephones, radios, personal digital assistants (PDAs), portable or stationary computers, etc.

Thus, it is respectfully submitted that the combination of such a communication device with Anderson’s earmold does not result in a wireless transmitter housed in an earmold as recited in claim 1.

Applicant also respectfully submits that the proposed combination of references is improper. Given that Nemirovski’s description of its communication device 14 as quoted above, without further teaching or suggestion, one of ordinary skill in the art would not modify Nemirovski’s system by housing its communication device 14 into an earmold such as the one provided by Anderson.

Additionally, Nemirovski states, in column 3, lines 20-23: “The ear microphone assembly allows for separation of a speech input device for a cellular, or wireless, telephone from an RF

transceiver of the telephone.” This teaches away from a wireless transmitter housed in an earmold as recited in claim 1.

Applicant respectfully requests reconsideration and allowance of claim 1.

*Claims 2-5 and 9-13*

Applicant respectfully traverses the rejection. Claims 2-5 and 9-13 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2-5 and 9-13.

Applicant respectfully requests reconsideration and allowance of claims 2-5 and 9-13.

§103 Rejection of the Claims Using Nemirovski and Dar

Claims 14-18 and 22-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nemirovski in view of Dar (US 5,761,319, herein “Dar”).

*Claim 14*

Applicant respectfully traverses the rejection and submits that the office action does not set forth a proper *prima facie* case of obviousness because the cited portions of Nemirovski and Dar, individually or in combination, do not provide the claimed subject matter. For example, Applicant is unable to find in the cited portions of Nemirovski and Dar, among other things, a behind-the-ear (BTE) module including a wireless transmitter to transmit a first wireless signal representing an occluded sound, as recited in claim 14.

In regard of claim 14, the Office Action (paragraph 7) does not specify which element of Nemirovski is read to be the wireless transmitter recited in claim 14. Applicant assumes that the Examiner read Nemirovski’s communication device 14 to be the recited wireless transmitter. Nemirovski relates to a communication system 10 including an earset 18, and communication device 14 is external to earset 18 (FIGS. 1 and 3; column 4, lines 27-42). Nemirovski states, in column 4, lines 17-24:

In the illustrated embodiment, the communication device 14 and the remote telephone 16 are wireless telephones, such as cellular telephones. However, one skilled in the art will appreciate that the communication device 14 and/or the remote telephone 16 can be other types of devices, including

hardwired (land line) telephones, radios, personal digital assistants (PDAs), portable or stationary computers, etc.

Thus, it is respectfully submitted the combination of such a communication device with Dar's BTE module does not result in an BTE module including a wireless transmitter, as recited in claim 14.

Applicant also respectfully submits that the proposed combination of references is improper. Given that Nemirovski's description of its communication device 14 as quoted above, without further teaching or suggestion, one of ordinary skill in the art would not modify Nemirovski's system by housing its communication device 14 into a BTE module such as the one provided by Dar.

Applicant respectfully requests reconsideration and allowance of claim 14.

*Claims 15-18 and 22-25*

Applicant respectfully traverses the rejection. Claims 15-18 and 22-25 are dependent on claim 14, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 14 is incorporated herein to support the patentability of claims 15-18 and 22-25.

Applicant respectfully requests reconsideration and allowance of claims 15-18 and 22-25.

§103 Rejection of the Claims Using Nemirovski and Brander

Claims 26-27 and 30-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nemirovski in view of Brander (US 5,991,419, herein "Brander").

*Claim 26*

Claim 26 has been amended to better describe the recited subject matter by incorporating the elements of claims 30 and 31 as originally filed.

Applicant respectfully traverses the rejection and submits that the office action does not set forth a proper *prima facie* case of obviousness because the cited portions of Nemirovski and Brander, individually or in combination, do not provide the claimed subject matter. For example, Applicant is unable to find in the cited portions of Nemirovski and Brander, among other things, a first ear-level device including a wireless transmitter to transmit a first wireless

signal representing an occluded sound, the first ear-level device being one of a behind-the-ear (BTE) device and an in-the-ear (ITE) device, as recited in claim 26.

The Office Action (paragraph 8) reads Nemirovski's communication device 14 to be the wireless transmitter recited in claim 26. Nemirovski relates to a communication system 10 including an earset 18, and communication device 14 is external to earset 18 (FIGS. 1 and 3; column 4, lines 27-42). Nemirovski states, in column 4, lines 17-24:

In the illustrated embodiment, the communication device 14 and the remote telephone 16 are wireless telephones, such as cellular telephones. However, one skilled in the art will appreciate that the communication device 14 and/or the remote telephone 16 can be other types of devices, including hardwired (land line) telephones, radios, personal digital assistants (PDAs), portable or stationary computers, etc.

Thus, it is respectfully submitted the combination of such a communication device with Brander's system does not result in a wireless transmitter in one of a BTE device and an ITE device as recited in claim 1.

Applicant also respectfully submits that the proposed combination of references is improper. Given that Nemirovski's description of its communication device 14 as quoted above, without further teaching or suggestion, one of ordinary skill in the art would not modify Nemirovski's system by housing its communication device 14 into one of a BTE device and an ITE device.

Applicant respectfully requests reconsideration and allowance of claim 26.

*Claims 27 and 30-35*

Applicant respectfully traverses the rejection. Claims 27 and 30-35 are dependent on claim 26, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 26 is incorporated herein to support the patentability of claims 27 and 30-35.

Applicant respectfully requests reconsideration and allowance of claims 27 and 30-35.

§103 Rejection of the Claims Using Nemirovski, Brander, and Kvaloy

Claims 28-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nemirovski as modified by Brander as applied to claim 26 above, and further in view of Kvaloy (US 6,728,385, herein "Kvaloy").

Applicant respectfully traverses the rejection. Claims 28-29 are dependent on claim 26, which is believed to be allowable for at least the reasons set forth above. It is believed that the addition of Kvaloy does not remedy the deficiency of Nemirovski and Brander as discussed for claim 26 above. Therefore, the discussion above for claim 26 is incorporated herein to support the patentability of claims 28-29.

Applicant respectfully requests reconsideration and allowance of claims 28-29.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6912 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date

Oct. 12, 2007

By

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 15 day of October 2007.

**CANDIS BUENDING**

Name

Signature

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